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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE TINOCO,

Defendant and Appellant.

D052938

(Super. Ct. No. SCD204805)

APPEAL from a judgment of the Superior Court of San Diego County, Jeffrey F. Fraser, Judge. Affirmed.

Defendant Jose Tinoco appeals a judgment entered after his guilty plea to charges of two counts of attempted carjacking of victims Juan Calleros (count 1) and Rafael Garcia (count 2) (Pen. Code, § 664/215, subd. (a))<sup>1</sup> with a weapon use enhancement appended to both counts (§ 12022, subd. (b)(1)) and a prior serious felony conviction allegation (§ 667, subd. (a)(1).) The court sentenced Tinoco to the middle term of eight

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

years six months in prison as stipulated in the plea agreement. His sentence consisted of two years six months for count 1, a one-year enhancement for weapon use on count 1, five years for a prior serious felony conviction, two years six months concurrent for count 2, and one year concurrent for the enhancement on count 2. California Rules of Court, rule 8.304(b)(4)(B) and section 1237 authorize Tinoco's appeal.

Tinoco contends the court breached the terms of his written plea agreement by sentencing him to two counts of attempted carjacking rather than to one count, and the written plea agreement controls over any contrary oral plea made at the change of plea hearing. We conclude the written plea agreement was ambiguous, but the agreement as a whole and the surrounding circumstances evidence Tinoco's intent to plead guilty to two counts of attempted carjacking. Accordingly, we affirm the judgment.

## FACTS

About 9:20 p.m. on March 14, 2006, Juan Calleros's car was stopped at a gas station. After Calleros's passenger got out of the car, Tinoco got in the empty passenger seat and pointed a knife at Calleros. Tinoco told Calleros to leave the keys in the car and get out. Calleros took the keys as he got out of the car.

Calleros told other customers Tinoco was trying to steal his car. Two customers chased Tinoco, who ran away "swinging his blade." Calleros watched Tinoco approach two other cars at an intersection near the gas station. Tinoco pointed a knife at one driver, Rafael Garcia. Someone distracted Tinoco's attention from Garcia, allowing him to drive away. Garcia later spoke with police officers about the incident.

At his change of plea hearing, Tinoco affirmed he spoke with his attorney about the charges and any potential defenses and understood the written plea agreement, in which he contends he agreed to a guilty plea of only one count of carjacking. However, he orally pleaded guilty to counts 1 and 2, and admitted the weapon use enhancements and the prior serious felony allegation.

## DISCUSSION

### I

Interpreting a document involves a question of law for de novo review by an appellate court, unless the interpretation "turns upon on the credibility of extrinsic evidence." (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865-866.) We exercise de novo review, because the facts are undisputed.

"A negotiated plea agreement is a form of contract, and it is interpreted according to general contract principles. [Citations.]" (*People v. Shelton* (2006) 37 Cal.4th 759, 767.) The goal of contract interpretation is to give effect to the intent of the parties. (Civ. Code, § 1636.) Clear and unambiguous contractual language governs. (Civ. Code, § 1638.) Ambiguous or uncertain language is interpreted by considering "the sense in which the prosecutor and the trial court . . . believed, at the time of [stating] it, that defendant . . . understood it. [Civ. Code,] § 1649." (*Shelton*, at pp. 767-768.) We can discern mutual intent by considering " 'objective manifestations of the parties' intent, including the words used in the agreement, as well as extrinsic evidence of such objective

matters as the surrounding circumstances[,] " and the matter to which it relates. (*Shelton*, at p. 767; Civ. Code, § 1647.)

## II

### A. *The Written Plea Agreement*

Tinoco's written plea agreement consisted of 15 paragraphs. Tinoco initialed a box beside each paragraph and signed the final page of the agreement. The plea agreement was divided into sections by words in bold, capital letters. These sections were: constitutional rights, consequences of plea of guilty or no contest, other waivers, plea, attorney's statement, interpreter's statement, prosecutor's statement, and court's finding and order.

Paragraph 1 stated, "Of those charges now filed against me in this case, I plead \_\_\_\_\_ to the following offenses and admit the enhancements, allegations and prior convictions as follows." The blank line contained the handwritten word, "Guilty." In handwriting, there was listed counts 1 and 2, sections 664 (attempted crimes), 215, subdivision (a) (carjacking), 12022, subdivision (b)(1) (weapon use enhancement), and 667, subdivision (a)(1) (prior serious felony conviction).

The typewritten portion of paragraph 2 stated, "I have not been induced to enter this plea by any promise or representation of any kind, except: (*State any agreement with the District Attorney.*)" In handwriting were the words, "Plea to [count] 1 admit [sections] 12022[, subdivision (b)(1) and] 667[(a)(1)] allegations, stipulated 8.5 [years]."

The words "dismiss other counts" were crossed out and the words "Dismiss [balance]" were added at the end.

Paragraph 14's typewritten portion stated, "I now plead Guilty/No Contest and admit the charges, convictions and allegations described in paragraph #1, above. I admit that on the dates charged, I: (*Describe facts as to each charge and allegation*)." "Guilty" was circled by hand. Below this was a handwritten description of the charges with changes in bold:

"Did unlawfully attempt to take **2** motor vehicles in the possession of **2** others by force & fear from **their** immediate presence with the intent to deprive such persons of said vehicle[s] & used a knife in the commission of the offenses & was previously convicted of a serious felony."

#### *B. Analysis*

Generally, parties to a plea agreement intend to lessen a defendant's punishment, save the cost of a trial, increase efficiency, and provide flexibility in the criminal process. (*People v. Masloski* (2001) 25 Cal.4th 1212, 1216.) However, the parties' intent in the present written plea agreement is ambiguous, because paragraphs 1 and 14 contained Tinoco's guilty plea to both counts, but paragraph 2 stated Tinoco pleaded guilty to only count 1. We look to the words of the agreement and the matter to which the agreement relates (the change of plea hearing) to interpret the parties' intent. (*People v. Shelton*, *supra*, 37 Cal.4th at pp. 767-768; Civ. Code, § 1647.)

The words of the agreement contained in paragraphs 1, 2, and 14 and the change of plea hearing evidence Tinoco's intent to plead guilty to both counts of attempted

carjacking. Only paragraph 14 was under the heading "PLEA." It also stated the factual basis for the charges and cross-referenced the statutory basis in paragraph 1. The alterations to paragraph 14 attempted to clarify any ambiguity about the number of counts in Tinoco's guilty plea by changing singular word forms to plural forms. The parties also attempted to clarify the plea by replacing "dismiss other counts" in paragraph 2 with "Dismiss balance." We treat any residual ambiguity of intent as a mistake. (Civ. Code, § 1640; *Hess v. Ford Motor Co* (2002) 27 Cal.4th 516, 524 [disregarding mistakes and regarding only intent].)

The transcript of the change of plea hearing contains the prosecution and court's belief about Tinoco's understanding of the written agreement. At the hearing Tinoco stated he understood everything in the written agreement, initialed each paragraph in the written agreement, spoke with his attorney about the charges and possible defenses, and pleaded guilty to counts 1 and 2 and related enhancements. When the prosecution asked the court, "[O]n count 2 are you going to impose the same time term and run concurrent?" the court replied, "Yes . . . . I assume that it was contemplated by the parties?" Counsel for both parties replied, "Yes." The court and prosecution believed Tinoco understood he pleaded guilty to both counts of attempted carjacking. (*People v. Shelton, supra*, 37 Cal.4th at pp. 767-768.)

We conclude the written plea agreement was ambiguous, because paragraphs 1 and 14 are inconsistent with paragraph 2. However, the explicit guilty plea in paragraph 14, together with the court's oral exchange with the prosecution and Tinoco at the change

of plea hearing show Tinoco's intent to plead guilty to both counts of attempted carjacking.

DISPOSITION

The judgment is affirmed.

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McDONALD, J.

WE CONCUR:

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HUFFMAN, Acting P. J.

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AARON, J.